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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re RONALD LEE ADAMS

on

Habeas Corpus.

B292106

(Los Angeles County
Super. Ct. No. BH011798)

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. William C. Ryan, Judge. Petition granted.

Michael Satris, under appointment by the Court of Appeal, for Petitioner.

Xavier Becerra, Attorney General, Phillip J. Lindsay, Senior Assistant Attorney General, Julie A. Malone and Jennifer O. Cano, Deputy Attorneys General, for Respondent.

I. INTRODUCTION

Petitioner Ronald Lee Adams is a third-strike inmate currently serving an indeterminate life term of imprisonment for carjacking (Pen. Code, § 215, subd. (a))¹ and taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)). His prior convictions include two 1981 registrable sex offenses for which he served a two-year prison term. In August 2018, he filed a petition for writ of habeas corpus, arguing the Department of Corrections and Rehabilitation (CDCR) erred in finding him ineligible for an early parole hearing pursuant to Proposition 57. We issued an order to show cause and now grant the petition.

II. DISCUSSION

A. *Adams' Prior Sex Offense Convictions Do Not Bar Early Parole Consideration*

The CDCR's regulations deem Adams ineligible for an early parole hearing because he was previously convicted of registrable sex offenses. (See Cal. Code Regs., tit. 15, § 3496, subd. (b) ["[A]n inmate is not eligible for a parole consideration hearing by the Board of Parole Hearings . . . if the inmate is convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in sections 290 through 290.024 of the Penal Code"].)

In *In re Gadlin* (2019) 31 Cal.App.5th 784, review granted May 15, 2019, S254599 (*Gadlin*), we held these regulations invalid insofar as they bar early parole consideration for an inmate who, like Adams, is subject to registration under section

¹ Unless otherwise stated, all further section references are to the Penal Code.

290 for a prior crime for which the inmate has already fully served his or her sentence (as opposed to inmates who are not incarcerated as a result of a conviction for a crime specified in section 290). As we explained in *Gadlin*, the regulation is inconsistent with article I, section 32, subdivision (b)(1) of the California Constitution and therefore void. (See *Henning v. Division of Occupational Saf. & Health* (1990) 219 Cal.App.3d 747, 757-758 [“ ‘[T]here is no agency discretion to promulgate a regulation which is inconsistent with the governing statute. . . . Administrative regulations that alter or amend the statute or enlarge or impair its scope are void.’ [Citation.]”].)

As Adams is identically situated to Gregory Gadlin in all material respects, we adopt our holding in *Gadlin* and grant the petition for writ of habeas corpus.

B. The CDCR’s Other Arguments Have Been Mooted or Withdrawn

The CDCR has advanced two other reasons for denying early parole consideration to Adams. As these arguments are now moot or withdrawn, we summarize them only briefly.

Adams was originally found ineligible for an early parole hearing because the emergency regulations in effect at the time classified third-strike inmates, like Adams, as violent offenders. (See Cal. Code Regs., tit. 15, former § 3490, subd. (a).) In May 2018, the CDCR adopted final regulations omitting this provision, but nonetheless categorically excluded third-strike inmates from Proposition 57 parole consideration. (See Cal. Code Regs., tit. 15, former § 3491, subd. (b)(1).) In *In re Edwards* (2018) 26 Cal.App.5th 1181 (*Edwards*), we invalidated this regulation. The CDCR has since promulgated revised emergency regulations, effective January 1, 2019, to comply with our holding

in *Edwards*. (Cal. Code Regs., tit. 15, § 3491, subd. (b)(1), Register 2018, No. 52 (Dec. 26, 2018).) These modified regulations moot the CDCR’s position that Adams is ineligible for early parole consideration because he is a third strike offender.

In its return to our order to show cause, the CDCR argued Adams is ineligible for early parole consideration because carjacking is classified as a violent felony under section 667.5, subdivision (c)(17) and has been so classified since 2000. Adams countered that he committed his crime in 1999, when carjacking was a violent felony only if it was “charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of section 12022 in the commission of the carjacking.” (Former § 667.5, subd. (c)(17).) Adams was not charged with using a weapon under section 12022, subdivision (b). In a motion filed May 21, 2019, the CDCR withdrew its argument that Adams is ineligible for an early parole hearing because carjacking is now a violent offense under section 667.5, subdivision (c)(17). As such, we do not address the merits of the argument.

III. DISPOSITION

Our disposition of this proceeding is accordingly as follows:
The petition for habeas corpus is granted. The California Department of Corrections and Rehabilitation is directed to evaluate Adams for early parole consideration within 60 days of the issuance of our remittitur.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.